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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1995

Addendum

SENEGAL 1/ 2/

[30 July 1996]

1/ For the second periodic report submitted by the Government of Senegal, see CCPR/C/37/Add.4; for its consideration by the Committee, see CCPR/C/SR.721-724 and Official Records of the General Assembly, Forty-second session, Supplement No. 40 (A/42/40), paras. 181-223. For the third periodic report submitted by Senegal, see CCPR/C/64/Add.5; for its consideration by the Committee, see CCPR/SR.1179-1181 and Official Records of the General Assembly, Forty-eighth session, Supplement No. 40 (A/48/40), paras. 81-114.

2/ The information communicated by Senegal in accordance with the guidelines for the first part of reports of States Parties is contained in the core document (HRI/CORE/1/Add.51).

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Introduction

1. The commitment to upholding the primacy of law, and more particularly to respect for human rights, derives from the Constitution which the Republic of Senegal adopted when it acceded to international sovereignty. The preamble of the Constitution refers to the Declaration of the Rights of Man and of the Citizen and the Universal Declaration of Human Rights of 10 December 1948 as sources of inspiration in this field. However, the Constitution does not confine itself to proclaiming Senegal's attachment to the fundamental human rights as defined in the two declarations; in its articles 6 to 20 - that is to say, in the operative part of its text - it defines them systematically and affirms respect for and guarantee of them in order to indicate that they are protected in day-to-day life in Senegal.

2. As regards racial discrimination in all its forms, as identified in article 2 of the International Covenant on Civil and Political Rights, it must be recognized that, as a result of the far-reaching cultural intermingling which is characteristic of the national life of the peoples, no such discrimination exists in Senegal. Even so, it is firmly condemned by article 4 of the Constitution as well as in the Penal Code and the Code of Criminal Procedure (CPP), which define it as a serious offence punishable by imprisonment and fines (Penal Code, art. 283 bis).

3. The independence of the judiciary and the guarantees relating to procedure enunciated in article 14 of the Covenant and which are available to all, are recognized first of all by the Constitution, but also by the legislation on legal proceeding applicable in Senegal. The Constitution affirms the existence of a judicial power which is independent of both the executive and the legislative powers. That independence is guaranteed in particular by the Higher Council of the Judiciary, which governs the careers of judges as regards appointment, promotion and discipline.

4. Since Senegal acceded to international sovereignty it has adhered, in accordance with the principle of succession of States, to all the international agreements by which the former colonial power was bound. Subsequently this country played an important part in the elaboration and adoption of the other international instruments which have come into being in the sphere of the promotion and protection of human rights.

5. Today Senegal is a party to:

19 United Nations international instruments;

34 ILO international instruments;

1 UNESCO international convention;

4 international instruments relating to humanitarian law;

2 Organization of African Unity international instruments.

It should be remembered that, under article 79 of the Constitution, these international instruments, once ratified, have an authority superior to that of national legislation.

6. The Constitution also contains guarantees relating to procedure. In particular, article 6 recognizes:

The sacred character of the person and the obligation of the State to protect and respect it;

The non-retroactivity of criminal law;

Recognition of the right of defence at all stages of proceedings;

The presumption of innocence.

All these principles are reaffirmed in the Penal Code and the Code of Criminal Procedure, which the courts apply daily.

7. The principle of respect for privacy enunciated in article 17 of the Covenant is given a prominent place in the Constitution, articles 10 and 13 of which protect the secrecy of correspondence and declare the home of the individual inviolable. These rights may not be infringed save in accordance with the law. For this reason the Penal Code and the Code of Criminal Procedure describe in detail the remedies and arguments available for the protection of those rights.

8. Articles 18 and 19 of the Covenant concern the right of everyone to freedom of thought, conscience and religion and the right to hold opinions without interference. With regard to these articles the Constitution, in article 8, spells out the contents of those rights and the means of protecting them. There are no restrictions on freedom of conscience, thought and religion. In practice the religions present in Senegal are in genuine harmony with one another and coexist in a spirit of mutual understanding.

9. Freedom of expression is exemplified by the striking development of the Press in Senegal during recent years. Coverage by private and independent information media there is among the most comprehensive in Africa. This freedom is guaranteed in particular by the effective action of the High Council for Radio and Television, which acts as a genuine regulator of the audio-visual sphere in Senegal. Finally, in a State subject to the rule of law such as Senegal, there is no restriction on freedom to express opinions other than those of the public authorities.

10. Freedom of assembly and freedom of association to defend common interests, enunciated in articles 21 and 22 of the Covenant, are recognized in articles 9 and 20 of the Constitution. Thus freedom to form associations is entire inasmuch as, apart from the legal formalities of constitution, associations and societies can be established freely. The same is true of the freedom to form trade unions in Senegal. The reality of this freedom is evidenced by the impressive number of associations of different types and the number of trade unions active within the country.

11. Article 26 of the Covenant relates to the equality of all persons before the law. The Constitution is very explicit on this point. Its article 1 requires the State to ensure that equality. Article 2 returns to the principle of equality in its second paragraph, which stipulates that no

section of the people nor any individual may assume the exercise of sovereignty, and in paragraph 3, which enunciates the principle of equality in connection with universal suffrage, which is equal for all. Finally, article 7 specifically affirms the equality of all human beings before the law and of equality between men and women in law; it goes on to state that no one in Senegal shall have any liabilities or privileges based on birth or family or on place of birth.

12. Article 27 of the Covenant is addressed to States in which ethnic, religious or linguistic minorities exist; it enunciates the principle that the States concerned are under an obligation to protect them. On account of the cultural and social intermingling which is a feature of the national community, there are no minorities in Senegal.

13. Having thus outlined the guiding principles governing the action of the State in the protection of the above-mentioned rights, this report will now consider in greater detail some of those rights enunciated in the Covenant.

I. THE RIGHT OF REMEDY IN CASES OF VIOLATIONS OF HUMAN RIGHTS (art. 2)

14. The right of remedy in cases of violations of human rights is a constitutional principle in Senegal. In that country there is a judicial power, which is exercised by the Constitutional Council, the Council of State, the Court of Cassation and the courts and tribunals.

A. Judicial remedies

15. One of the responsibilities of the Constitutional Council is to ensure that all legislation ranking below the Constitution is in conformity with it. The Council is also responsible for hearing disputes on electoral matters. It may also act as an appeals body in cases relating to violations of human rights where unconstitutionality is alleged in proceedings (which may be instituted by any individual) before the Council of State or the Court of Cassation and there the outcome of those proceedings depends on a ruling on whether a legislative instrument is in conformity with the Constitution (art. 20 of Organic Act 92-23 concerning the Constitutional Council dated 23 May 1992).

16. The Council of State is the judge of abuses of power by the executive authorities of the State and is responsible for ensuring the legality of administrative acts. Any person with a concern in either of these fields may bring the matter before it.

17. The Court of Cassation is responsible for pronouncing on the law and does this by means of the control it exercises over decisions of lower jurisdictions. It may receive an application for review on questions of law from any person whose application has been dismissed in proceedings of final instance.

18. The right of remedy also implies a possibility of filing complaints and instituting action by the public authorities. In Senegal this prerogative lies both with the Public Prosecutor and any victim of a violation of human rights.

19. The Public Prosecutor directs all legal action by the public authorities and the activities of the criminal police, which is responsible for identifying and reporting breaches of criminal law, for collecting evidence and for bringing offenders before the courts (Code of Criminal Procedure, art. 33). Except in the cases of a certain number of types of offences specifically enumerated by law (economic or family matters), the Public Prosecutor may institute proceedings without first having to have received a complaint.

20. The victim of a violation may institute action by the authorities through direct application to a court or by lodging a complaint with an examining magistrate, at the same time applying for indemnification (CPP, art. 76). The Public Prosecutor may only oppose action of this kind in the circumstances stipulated by law (where the matter does not involve a criminal offence).

21. When the victim lodges a complaint with the Public Prosecutor and the latter decides not to proceed, he must notify the victim in order to safeguard the latter's rights, enabling him to lodge his complaint with an examining magistrate together with an application for indemnification.

B. The Mediator of the Republic

22. Finally, the right of remedy in cases of violations of human rights also implies the ability to refer the matter to the Mediator of the Republic (an office created by Act 91-14 dated 11 February 1991). The task of the Mediator is to spur the administrative authorities to action (without encroaching on the powers of the judicial authorities) to find satisfactory solutions to cases of violations (in particular of rights) occurring as a result of malfunctioning of the administrative machinery. The Mediator of the Republic is highly appreciated by the Senegalese people on account of the effectiveness of his interventions.

C. Referral to international bodies

23. The right to remedy in the event of a violation of human rights may also be exercised at the African regional level, and in particular at that of the African Commission on Human and Peoples' Rights. The African Charter on Human and Peoples' Rights enables every individual to appeal, subject to certain conditions (the most important of which is that all domestic appeals procedures have been exhausted), to a Committee which examines complaints concerning human rights.

24. Since 1992 this procedure has been resorted to by one non-governmental organization, the Rassemblement pour la défense des droits de l'homme (RADDHO), against Senegal in respect of matters connected with the events in Casamance. Subsequently, on 2-7 June 1996 a delegation of the African Commission on Human and Peoples' Rights visited Senegal on a good offices mission, at the end of which it praised the helpfulness of the Government and the transparency of its policy in the field of human rights.

25. Finally, at the international level, there is a right of appeal against violations of human rights to both the Human Rights Committee and the

Committee against Torture. In this connection, it will be recalled that Senegal is a party to both the Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture.

26. Under these two international instruments, individuals may refer to the competent bodies complaints relating to individual cases of violations of human rights. The cases of Famara Kone and Mody Sy are examples. It will be recalled that the Human Rights Committee recommended that Mr. Kone be compensated following a long period of detention; this has just been done on the instructions of the President of the Republic.

27. It should be mentioned that Senegal has taken all necessary steps to make the declaration referred to in article 22 of the Convention against Torture.

D. The Senegalese Human Rights Committee

28. In a directive dated 23 April 1996 the Head of State gave instructions for the necessary steps to be taken to enable the Senegalese Human Rights Committee fully to perform its role and have adequate resources (premises, office equipment, secretariat, etc.) available to it.

29. The composition and tasks of the Senegalese Human Rights Committee, which are currently laid down in Decree No. 93-141, dated 16 February 1993, will have to be updated in the light of resolution 1994/54 of the Commission on Human Rights, dated 4 March 1994, concerning national institutions for the promotion and protection of human rights. Thus, the text establishing the Committee will have to be given a legislative basis. The composition of the Committee will ensure its independence and pluralist character (non-governmental organizations, philosophical schools of thought, academics and qualified experts; the administration may participate in an advisory capacity).

30. As regards the tasks of the Committee, it will be conceived as an advisory body for dialogue and consultation; its role will be one of promoting human rights. Within this framework it will be able to make any proposal it considers desirable to the public authorities.

E. The Interministerial Committee on Human Rights

31. The Interministerial Committee on Human Rights is responsible for coordinating government action in three principal fields:

The drafting and submission of periodical reports to international bodies in consultation with the Senegalese Human Rights Committee, and follow-up on those reports;

Replies to allegations of violations of human rights; in this context ministries receiving complaints or petitions will have systematically to examine them and submit the drafts of their replies to the Interministerial Committee;

The adaptation of Senegalese legislation to the requirements of international conventions on human rights. Under this head the Interministerial Committee will study proposals made by the Senegalese Human Rights Committee and ensure that they are followed up.

II. EQUALITY BETWEEN MEN AND WOMEN; PROTECTION OF THE CHILD AND THE FAMILY (arts. 3, 23 and 24 of the Covenant)

32. Equality between men and women and the protection of children are priority matters for the public authorities in Senegal. At the international level Senegal ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985 and the Convention on the Rights of the Child in 1990.

33. At the national level the principle of equality is enunciated in article 7 of the Constitution, while articles 14 to 18 deal with questions relating to the protection of the family and of children. Subsequently, in pursuance of various provisions in the Family Code, machinery was established which in most cases protects women. This is the case with article 152 of the Code, which declares the husband to be the head of the family. This provision is in no way pejorative in nature; it merely confers a function on the husband. If one turns to article 375 of the same Code, it will be seen that one element of this function is the requirement to contribute to household expenditure, the principal burden of which falls on the husband and which he may be compelled by the courts to fulfil. The situation is the same in article 153, which gives the husband the right to determine the residence of the household. This too is a function inasmuch as a court, on application from the wife, may change the place of residence if it is dangerous for her and her children. It also furnishes an element of protection for the wife, since responsibility for acquiring a dwelling for the household rests primarily with the husband.

34. For the same reasons, the Code assigns the exercise of parental authority over the children of the two spouses to the father. However, that authority will be exercised by the woman if the father renders himself unworthy to exercise that power or if he assigns it voluntarily (art. 277).

35. Polygamy is practised in Senegal; some 30 per cent of all marriages contracted in recent years are polygamous. This practice is under examination by a working group which has the task of drawing up the National Action Plan for Senegalese Women (1996-2000); it will certainly be making concrete proposals on the subject for consideration by the State authorities.

36. The family is the subject of particular attention; this is evidenced, among other things, by the establishment of a ministry responsible for family affairs. In view of the population pressures to which the country has been subject for several decades, the public authorities, while maintaining the prohibition of abortion, have introduced a family planning programme which is now well known in every part of the country, since it is frequently resorted to.

37. There still remain some pockets of resistance in the field of equality between men and women; one of these is lack of access to certain managerial functions and to the armed forces.

38. However, some progress has been observed with regard to the army; Act No. 82-17, dated 23 July 1982, now permits admission of women to the army.

39. Finally, as a result of the heavy pressures being exercised at national and international level by women's movements and associations and the Commission on the Status of Women, progressive trends are emerging.

40. As regards the protection of children, it must be mentioned that both before and after ratification of the Convention on the Rights of the Child the public authorities in Senegal have unceasingly worked to bring national legislation into line with international legal standards. Evidence of this is to be found in the initial report on the application of the Convention on the Rights of the Child, submitted in November 1995, following which the Committee on the Rights of the Child took note with satisfaction of the efforts made by Senegal in securing the survival, protection and development of children.

III. STATE OF EMERGENCY (art. 4)

41. A state of emergency is an exceptional measure for which provision is made in the Constitution; it serves to protect general peace and order within the country. It was, for instance, proclaimed in 1989 when incidents occurred in Dakar involving Mauritanian nationals living in the capital.

42. Since it derives from the Constitution, the declaration of a state of emergency is subject to the control of both Parliament and the Constitutional Council. It is strictly regulated, in a manner designed to protect fundamental human rights, by Act No. 69-29 of 29 April 1969. This text provides for the establishment of a control commission to supervise the state of emergency; all cases of violations of human rights are referred to it. As regards Casamance, it should be stated categorically that no state of emergency has ever been specifically proclaimed in that region.

43. Finally, it should be pointed out that neither a state of siege nor a state of exception provided for by article 47 of the Constitution has been applied in Senegal since the country acceded to international sovereignty.

IV. THE RIGHT TO LIFE (art. 6)

44. The right to life and physical integrity is guaranteed under article 6 of the Constitution. The latter proclaims the sacred nature of the human person, which the State has an obligation to protect, under the conditions laid down by law.

45. The section of the Penal Code which deals with the application of the death penalty excludes pregnant women until they have given birth (art. 16).

46. Likewise, article 52 of the Code prohibits the execution of a death sentence imposed on a minor; the death sentence must be replaced by a sentence of 10 to 20 years' imprisonment.

47. Finally, Senegal is considered by the international community and by certain non-governmental organizations as a country favouring in practice the abolition of the death penalty. Only twice (in 1967) have death sentences been carried out during 30 years of independence.

48. As regards extrajudicial executions, mentioned in the Covenant, strictly speaking, none have taken place in Senegal. Admittedly, there have been violent and fatal clashes from time to time between the army and police and armed rebel movements in Casamance, but it has never been established that the forces in question deliberately sought to kill. There has been no deliberate intent to commit extrajudicial executions.

V. THE PROHIBITION OF TORTURE (art. 7)

49. As regards the prohibition and repression of torture, it should be noted that on 26 August 1986 Senegal ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, which came into force at international level on 26 June 1987.

50. That Convention requires States parties to take measures to prevent torture, to undertake impartial inquiries whenever there are reasonable grounds for belief that acts of torture have been committed and to punish the offenders accordingly. Even before this Convention came into force, Senegal gave effect to it by opening an investigation into a case of torture of a person held on police premises as a result of which he died. The offenders, who were policemen, were brought to trial and sentenced on 10 April 1987 to two years' imprisonment and fines of CFAF 50,000; the State of Senegal was declared civilly liable in an amount of CFAF 7.5 million.

51. The fact that such a procedure was possible notwithstanding the absence of any definition of torture in national legislation is remarkable. Furthermore, during 1996 the Head of State instructed the Minister of Justice to include a definition of torture and provision for its punishment in the Senegalese Penal Code. Draft legislation on the subject has been adopted by Parliament.

A. Legislative framework

1. Police custody

52. The situation in which torture is most likely to occur is certainly that of detention in police custody (garde à vue), which is a measure to which officers of the criminal police may resort in the course of investigations. The Senegalese legislature has, therefore, enacted precise and detailed regulations governing this measure, the manner in which it is applied, its supervision and penalties in cases of abuse.

53. Thus, article 55 of the Code of Criminal Procedure provides that a person may be detained only if there is serious and concordant evidence of a nature to give rise to a formal charge. Immediately on effecting the detention, the officer of the criminal police becomes subject to a number of obligations.

54. These include the obligation to:

Inform the person concerned of the reason for the measure;

Immediately inform the Public Prosecutor or his representative responsible under the law for supervision of the measure;

Interrupt periods of questioning by periods of rest, all of which shall be mentioned in the record and signed by the detainee, on pain of nullity;

Apply to the Public Prosecutor's Office for an extension of the measure beyond 48 hours;

Inform the detainee of this application and of his right to be examined by a doctor;

Specify, at the end of the record, and on pain of nullity, whether or not the detainee has signed;

Bring the detainee before the Public Prosecutor within the stipulated period or, if transportation is difficult, refer the case to him; and

Keep a register of detentions at the local headquarters of the criminal police and submit it to judicial authorities whenever required to do so.

55. Article 59 of the Code of Criminal Procedure provides for sanctions in the event of abuses committed by an officer of the criminal police during detention of a suspect. The sanctions may be disciplinary (pronounced by a criminal court on application by the Public Prosecutor) or penal (in which case articles 110, 149 and 334 ff. of the Penal Code will be applied).

2. Special regulations

56. There are special regulations prohibiting torture applicable to the armed forces in general and the gendarmerie in particular.

57. Article 34 of Decree No. 90-1159, dated 12 October 1990, laying down general disciplinary rules in the armed forces, reads as follows:

"In application of the international conventions approved or ratified and published, it is forbidden:

- To use any means which give rise to needless suffering or injury;

- To commit criminal acts against the lives, the physical integrity or the human dignity of sick or injured persons, shipwrecked persons, prisoners and civilians generally, in particular by murder, mutilation, cruel treatment and torture."

58. In addition, Decree No. 74-571, dated 13 June 1974, establishing regulations for employment and service in the gendarmerie, after recalling the obligations incumbent on officers of the criminal police, contains the following provision (art. 88):

"Any act committed by the gendarmerie which disturbs the citizens in the exercise of their personal liberty, or in their privacy, and which is not justified by the exercise of a right, is an abuse of

authority. Non-commissioned officers and gendarmes who are guilty of such acts are liable to disciplinary measures, without prejudice to any legal proceedings which may be instituted against them.

"Illegal arrest, the detention of a person in a place other than one appointed by the Government and abusive detention in excess of the period stipulated for detention constitute criminal abuse of office on the part of the offenders."

B. Follow-up of the recommendations of the Committee against Torture

59. After the submission of the report on the implementation of the Convention against Torture, the Government of Senegal gave immediate effect to the recommendations of the Committee against Torture. Thus, for the next parliamentary session the Minister of Justice has been invited to prepare a bill on the criminalization of acts of torture in conformity with the Convention against Torture.

60. He also received instructions, at the same time as the Minister of the Interior and the Minister of the Armed Forces, that cases of human rights violations, and in particular acts of torture, should be investigated and proceedings instituted to bring the offenders to justice. Those instructions were likewise communicated to all law-enforcement authorities (prosecutors, police, gendarmerie).

61. The President of the Republic furthermore gave instructions for improved observance by Senegal of the obligations arising from its international commitments. In that regard, he requested in particular that:

Senegal should make the declaration provided for in article 22 of the Convention against Torture to recognize the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction;

Solutions should be found to reduce the length of temporary detention as far as possible in connection with judicial proceedings;

The medical profession, like the police and gendarmerie, should be able to receive training in human rights;

Cooperation with credible non-governmental organizations engaged in the promotion and protection of human rights should be reinforced.

62. All these recommendations are being followed up at the interministerial committee level.

C. Replies to allegations

63. Concerning the allegations of torture made recently against Senegal, it should be noted that all those deemed serious have systematically been investigated. Where allegations have not given rise to the opening of inquiries or judicial examinations, this has been due for the most part to a

lack of information available to the competent authorities, and sometimes to a lack of probative evidence, rather than to any refusal to open an inquiry or judicial examination for lack of a complaint.

64. In this regard, it should be pointed out that the allegations made against Senegal principally concern two regions, whereas the country has 10 regions in all. As to the cases in the Dakar region, the allegations concern only events connected with grave disturbances of public order, and the climate thus created has often led the various protagonists to prefer the media forum of the streets and press conferences to the rigour of the courts, thereby encouraging a belief that the competent authorities are deliberately not taking action.

1. The Mody Sy/Ramata Gueye case

65. On Saturday, 15 May 1993, Babacar Seye, Vice-President of the Constitutional Council, was shot dead as he was leaving his court to make his way home. The inquiry which opened following this assassination led to the arrest of those allegedly responsible, namely Amadou Clédor Sene, Papa Ibrahima Diakhate and Assane Diop, and then of the alleged accomplices, namely Samuel Sarr and Mody Sy, said by the three aforementioned persons to have been behind the murder.

66. Within the framework of the judicial proceeding conducted by the senior examining magistrate of Dakar, Ms. Ramata Gueye was heard by the gendarmes, on judicial authority, in particular concerning the activities of Papa Ibrahima Diakhate, whose friend she is and with whom she had gone into hiding, after the events, in a small town outside Dakar.

(a) The allegations of Mody Sy in the proceeding connected with the assassination of Babacar Seye

67. The requirements of the Code of Criminal Procedure regarding custody were fully respected during the preliminary inquiry, Mr. Sy having been examined at his request by a doctor, who found nothing to report. After his appearance before the examining magistrate, he was again examined by a doctor, following an inquiry by his lawyer and with the approval of the Public Prosecutor.

68. Report No. 070SMS/CONF of 11 June 1993 prepared in this regard is contained in the file and was brought to the attention of Mr. Sy's lawyers, who did not make any observation, although allowed to do so by the Code of Criminal Procedure. Furthermore, the examining magistrate, who wished to arrange for counter-evidence to be provided by calling on a third doctor pursuant to Ordinance No. 28/93, dated 22 July 1993, met with a categorical refusal from Mr. Mody Sy to undergo the examination.

(b) Complaint by counsel for Sy and Gueye

69. The lawyers briefed to defend Mody Sy in the proceeding following the murder of Babacar Seye took up the case of Ramata Gueye, presented as a victim of torture during her hearing by the gendarmes, and on 30 July 1993 sent a

letter to the Chief Prosecutor attached to the Court of Appeal to lodge a complaint on behalf of Mody Sy and Ramata Gueye alleging torture by an unknown person or persons.

70. The inquiry which was carried out did not make it possible to substantiate the allegations of torture, and the findings of the inquiry, together with the Chief Prosecutor's decision to file the case with no further action taken, were brought to the attention of the complainants by means of the Chief Prosecutor's letter No. 674 of 2 May 1994. In that letter, the Chief Prosecutor at the same time reminded the complainants and their lawyers of their right to lodge a complaint with the examining magistrate and institute criminal indemnification proceedings, under the relevant provisions of the Code of Criminal Procedure, and advised them that the report of the inquiry was available for them to consult in the registry of the Chief Prosecutor's Office.

71. By letter No. D.1245/MK/HD of 6 May 1994, the coordinator of the group of lawyers briefed by the complainants acknowledged receipt of the above letter and asked to be provided with a copy of the report.

72. By letter No. 770 of 25 May 1994, the Chief Prosecutor notified the Chief Registrar of the Court of Appeal of the authorization given to the coordinator to take a copy of the report, and invited him to grant any request to that end.

73. No response has been noted since that date, although the appointed lawyers were free to proceed on the basis of the provisions of articles 76 and 77 of the Code of Criminal Procedure concerning the institution of criminal indemnification proceedings, as indicated above.

2. The Lamine Samb case

74. At a rally organized on 16 February 1994 by Senegalese opposition parties constituting the Confederation of Democratic Forces (CFD) and authorized by the public authorities, six police officers were killed in the discharge of their duties.

75. Shortly before the rally began, the demonstrators, apparently having planned and prepared their action, had lit several fires in various parts of the city, burning and wrecking everything in their path, and managed to frustrate the efforts of the security forces deployed and thus reach the city centre. After the initial moments of shock had passed, action taken when the security forces regrouped made it possible to stop several of the vandals on the scene, who, when questioned, enabled other arrests to be made.

76. It was in this context that, on 17 February 1994, a certain Lamine Samb, identified as having taken part in the incident, was questioned at his home. When his statement was taken by the criminal police officers in charge of the inquiry, Mr. Samb confirmed the premeditated nature of the events of 16 February; the statement is contained in a report signed by his own hand on 18 February 1994.

77. The same report includes a note to the effect that while he was being transferred from the premises of the Criminal Investigation Division to the

Plateau police station, Mr. Samb was taken ill, suffering from dizziness and vomiting. After he had rested, it was possible to bring him to the police station for the night. This final note was also signed by Mr. Samb, who attributed his state to a fight that had occurred during the march between demonstrators who had failed to agree on what action to take. During the fight, he had reportedly received several blows and had fallen and been trampled on, a fact that would explain his non-participation in the rest of the events.

78. Lamine Samb was admitted urgently to the Dakar main hospital on 19 February 1994 at 3.35 p.m., following a request from chief police commissioner Abdoulaye Niang, but died there at 4.30 p.m.

79. On instructions from the Public Prosecutor, criminal police officers opposed the handing over of the body and requested an autopsy by application No. 000239/DPJ/DIC of 20 February 1994, a decision that was not appreciated at the time by the relatives, and the Public Prosecutor was even obliged to explain it in the press.

80. The autopsy on Mr. Samb was carried out by a group of six experts, including a forensic physician detached from the Institute of Forensic Medicine in Paris and an expert working for the Court of Appeal of Paris, who set out their findings in a report submitted to the police authorities requesting it in confidential communication No. 3/conf/MC of 5 March 1994.

81. This document was transmitted to the competent Dakar prosecutor and also forwarded to the deceased's relatives for their comments. Neither they nor the appointed lawyers made any comment and the Chief Prosecutor, having himself found no grounds for instituting a judicial inquiry, filed the case.

82. Regarding the concern about the publication of this expert report in the press, Senegalese positive law does not provide for that possibility, as the document is part of a judicial procedure classified as confidential that might be referred to again if new evidence is discovered, in accordance with the provisions of the Senegalese Code of Criminal Procedure.

83. The Constitution guarantees the freedom and independence of the judges responsible for evaluating the appropriateness and legality of actions to be undertaken and carried out, and the judicial decisions taken by them very recently have once again provided striking evidence of that independence.

3. The Marème Ndiaye case

84. By a letter of 18 October 1994, court lawyer Ibrahima Kane transmitted to the Public Prosecutor attached to the Dakar Special Regional Court the complaint of Mrs. Ndiaye, dated 20 September 1994, in which the latter alleged that she had been subjected to serious ill-treatment by named police officers.

85. By a letter of 24 October 1994, the Dakar Prosecutor reported to the Chief Prosecutor attached to the Court of Appeal to ask what steps should be taken. By letter No. 77 of 11 November 1994, the Chief Prosecutor instructed him to open a judicial inquiry, the order being transmitted by communication No. 4280 of 16 November 1994 addressed to the Criminal Investigation Division.

86. Following the preparation of inquiry report No. 443 of 8 March 1995, the Chief Prosecutor attached to the Court of Appeal, on being informed, reported to the Minister of Justice, by confidential letter No. 63 of 9 June 1995, telling him in part:

> "There emerge from the aforesaid report some particularly grave facts leading me to advise a judicial examination with requests for detention warrants against all the persons implicated in this degrading affair, including the police officer and members of the forces of law and order concerned, saving a better assessment on your part."

87. After having informed the Minister of the Interior, the Minister of Justice ordered the opening of a judicial examination which led to the arrest and charging of those thought to be responsible for the acts of torture.

88. The judicial examination is currently proceeding.

4. The Babacar Thior case

89. Following the complaint of lawyer Babacar Thior, information was placed before the Minister of Justice by confidential letter No. 59 of 2 August 1994 from the Chief Prosecutor attached to the Court of Appeal.

90. By letter No. 133 of 3 August 1994, the Minister of Justice addressed the Minister of the Armed Forces, providing him with the information brought to his knowledge and at the same time requesting him to issue an order for the prosecution of the Gendarmerie personnel incriminated. That document was to be issued as No. 035/MFA/HC/DJM of 20 April 1995 and led to the opening of a judicial inquiry on the basis of articles 166, 178 and 294 of the Penal Code.

91. The inquiry made it possible to identify and arrest the gendarmes responsible, who were charged and confined in custody by the examining magistrate. The judicial inquiry is in progress.

92. In this regard, it should be noted that Act No. 94-44 of 27 May 1994 approving the Code of Military Justice, which abrogates and replaces the Senegalese Code of 1963 until then applicable in Senegal, requires the Minister of the Armed Forces to issue the order to prosecute when an offence under the criminal law has been brought to his attention by a competent magistrate.

93. After receiving the letter dated 3 August 1994 from the Minister of Justice, the Minister of the Armed Forces had responded by writing on 12 August 1994 to the High Commander of the Gendarmerie and Director of Military Justice, requesting the preparation of the prosecution order. The delays noted in the issuance of the document requested in this particular case were due only to the subsequent administrative inquiry.

5. The Djiby Ali case

94. By a letter dated 19 April 1996, Djiby Ali filed a complaint with the Dakar Prosecutor alleging that he had been beaten and injured by officers at the Pikine police station. These acts, which were perpetrated on the premises of the police station, made the victim unfit for work for 60 days, as attested

by a medical certificate dated 19 April 1996; subsequently, by a letter of 22 April 1996, the Public Prosecutor called for the arrest of the persons involved.

95. Five police officers, including a police inspector, were then arrested and referred to the Public Prosecutor's office to be brought before the examining magistrate. They were formally charged by the examining magistrate, who remanded two of the officers in custody, the three others being placed under judicial supervision.

96. The examination is taking its normal course.

6. The Casamance case

97. The situation prevailing in this part of Senegal is quite specific, as it is a situation of conflict where the State is trying to restore and maintain order to protect the population. The Movement of Democratic Forces of Casamance (MFDC), whose members are armed, is engaging in acts of violence and barbarity.

(a) Exactions by MFDC members

98. It may be noted that between 1 January 1991 and 31 December 1995, the events in Casamance left 102 dead and 328 wounded among the security forces.

99. Between 1 January 1995 and 1 March 1996, the MFDC rebels carried out 61 attacks on people and property, as follows:

Fifty-two acts of aggression, in which 48 people, all of them civilians were killed;

Nine armed robberies, during which two people were killed and seven others wounded.

Most of these attacks were carried out during racketeering operations directed either against shopkeepers or against persons suspected of collaboration with the security forces. Many prominent figures and politicians among the victims were killed in cold blood. In this gruesome account reference should be made to the particularly inhuman circumstances in which the deputy prefect of Sindian and his three colleagues were murdered; nor should it be forgotten that MFDC members fired on a funeral procession in the village of Bindaba, killing three of the villagers.

100. According to a RADDHO report, a number of women have been raped by MFDC members in the last few years.

(b) Allegations of human rights violations

(i) The Famara Diedhiou case

101. Following the death of Famara Diedhiou in February 1994 while in custody on the premises of the gendarmerie brigade at Bignona, the Ziguinchor Prosecutor opened a judicial inquiry to determine the causes of the death,

pursuant to article 66 of the Code of Criminal Procedure, which provides that in a case of violent death, "the Public Prosecutor may ... request an inquiry to determine the causes of the death".

102. This proceeding, recorded at the Public Prosecutor's Office as No. 280/94/RP, is under way in the chambers of the Ziguinchor examining magistrate, where it is indexed as No. 58/94/RI of 31 August 1994.

103. At the same time, following the complaint and application for criminal indemnification submitted by court lawyer Ibrahima Kane, acting on behalf of the deceased's family, another proceeding, registered as No. 355/94/RP at the Public Prosecutor's Office, was initiated in the chambers of the Ziguinchor examining magistrate, where it is recorded as No. 88/94/RI of 17 October 1994. These two procedural steps led to charges being brought against three gendarmes.

104. The judicial proceeding is under way and the most recent action taken in this case is the sending of letters rogatory by the Ziguinchor magistrate to the senior justice of Dakar for the hearing of a witness.

(ii) Mass arrests and detentions

105. The arrests made in Casamance concern not only persons caught bearing weapons but other individuals identified as in one way or another aiding the fighters, either by supplying them with information or means to pursue their activities, or by sheltering them.

106. Under these circumstances, it is normal that arrests should have been made on the basis of information obtained from other detainees or from persons of good will, and that no trial should as yet have taken place in an affair involving so many individuals and offences.

107. The whole affair, indeed, constitutes one and the same case and the only course of action for the examining magistrate dealing with it is to carry out his inquiry to identify those persons in respect of whom there is sufficient evidence for them to be sent for trial.

108. Notwithstanding, applications for release on bail from the defendants, their counsel or even the Public Prosecutor are considered during the proceedings and action is always taken on them.

109. Thus, Demba Ndiaye, Sanoune Bodian, Sarany Badiane, Edmond Bora and Mamadou Dieme, who had been placed in custody, have been released, the first-named person at the request of his lawyer and the others upon application by the Public Prosecutor.

110. As regards the situation of Abbé Diamacoune Senghor, contrary to the idea being maintained that he is under house arrest, the person in question enjoys complete freedom of movement and action. His status as moral leader of the MFDC, which makes him the Government's primary interlocutor, has meant that, like all the movement's leaders returning to Ziguinchor, such as Siby Badji, Abbé Diamacoune is afforded close protection that in no way prohibits him from coming and going, according to his needs, and from receiving any person he wishes to meet.

(iii) Allegations of the extraction of confessions under torture

111. As recalled earlier, the legislative and regulatory provisions in force formally prohibit ill-treatment and the courts sanction any such practice by the annulment of any proceeding based thereon, to say nothing of the judicial proceedings to which the offenders are liable.

112. In the Casamance cases, the allegations are so general in nature as to be very vague, and none of the persons charged by the examining magistrate has ever complained, thus giving the Public Prosecutor no grounds to initiate a judicial examination in that connection.

113. It is worth recalling, as stated earlier, that in Senegal no one may be imprisoned without judicial warrant, whether his or her arrest took place in the context of a preliminary inquiry by the police or gendarmerie, or on the judicial authority of the examining magistrate.

(iv) Missing persons

114. The situation of insecurity in the region, which has led to some displacement of populations fleeing the fighting and the exactions of MFDC elements to seek refuge in neighbouring countries, has not enabled the investigations conducted for the purpose of tracing persons who allegedly disappeared to arrive at conclusive results. This applies to the case of the French nationals who disappeared recently in the area and who have not as yet been found.

115. The voluntary return of displaced persons and refugees, as well as the census undertaken with the assistance of humanitarian and non-governmental organizations in the context of the negotiations with the MFDC, will make it possible to take more effective action in the investigations.

(c) Peace efforts in Casamance

(i) Ceasefire agreements

The Cacheu accord

116. The Government of Senegal has consistently maintained the dialogue with the MFDC even though that movement has no legal status permitting it to be treated in this way under the Constitution. It is in this context that it agreed to sign with it the so-called Cacheu accord.

117. By proceeding, under that accord, to withdraw its troops from the zone of fighting, and then passing Act No. 91-40 of 10 July 1991 regarding the amnesty of all acts connected with the events in Casamance, whether tried or not, the Government honoured all the commitments made in the accord.

118. These measures of appeasement were followed by the establishment of a governmental committee for the peace rediscovered, with considerable material and human resources and responsibility for pursuing the dialogue with a view to the effective application of the accord.

119. However, taking advantage of the vacuum left by the security forces, the MFDC fighters remaining imposed their own administration on the people in the area, behaving very often like an occupation force. The people were thus forced to contribute to the war effort and suffered all kinds of harassment when the levy was being collected. That situation led them to form self-defence militias to confront the MFDC troops; those confrontations claimed many victims among the civilian population.

120. In order to assure the security of the region in view of the exactions of the MFDC members not respecting the commitments made at Cacheu, it proved necessary once again to call on the forces of law and order.

The Ziguinchor accord

121. The MFDC exactions did not, however, change the approach of the Senegalese Government in its policy of seeking peace, and to that end a new ceasefire agreement was signed at Ziguinchor on 8 July 1994 between the Government of the Republic of Senegal and the MFDC.

122. This latter accord stipulated, among other requirements, the release of all detainees arrested for acts connected with the events in Casamance, and the Senegalese Government arranged for the release of all the persons concerned.

123. In addition, it continued to accede to requests from the members of the peace committee for the release of any person arrested, even after the signature and implementation of the Ziguinchor accord, and sometimes even when the persons concerned were charged with common crimes. Thus, between March and September 1993, 10 persons arrested for unauthorized possession of weapons and munitions, swindling or even possession of drugs, were released.

(ii) The amnesty laws

124. That same will had guided the passage of Act No. 88-01 of 4 June 1988, by which all crimes or offences subject to correctional measures committed between 1 January 1982 and 31 July 1987 in Senegal or abroad, in connection with the Casamance events, were amnestied.

125. This amnesty law was essentially intended to reconcile the parties in conflict, and even some perpetrators of grave human rights violations who had been sentenced for having abducted, tortured and cut the throat of a religious leader, and who had freely admitted those acts, benefited from the law.

126. It is in the same spirit, and pursuant to the Cacheu accord, which provided for the release of all the rebels detained, that Act No. 91-40 of 10 July 1991 was passed.

127. The national reconciliation aimed at in this accord could not be accomplished merely with provisional release not entailing the extinction of the public right of action, that being the objective sought. These amnesty laws were, therefore, passed to secure the pardon of children of Senegal thought at the time simply to have gone astray, and not to guarantee the

impunity of unidentified members of the security forces presumed responsible for mere allegations not yet substantiated at the time of the adoption of the amnesty laws.

(iii) Other measures

128. The initiatives of private individuals of good faith from a variety of backgrounds and all parts of the country, gathered together in a national commission to administer the peace, led to a new call for a unilateral ceasefire being issued on 3 December 1995 by Abbé Diamacoune.

129. This appeal was immediately heard and agreed to by the State and, acting on the request of this National Peace Commission, the Senegalese authorities set up a joint headquarters in Ziguinchor staffed by high-ranking officials of the Ministries of Justice, the Armed Forces and the Interior, with the essential task of managing and endeavouring to maintain the ceasefire.

130. The State of Senegal wishes a definitive settlement of the Casamance problem and for that reason is envisaging a comprehensive solution which covers all aspects of problems that can be taken into account for the restoration of peace.

131. This desire for a comprehensive and definitive settlement of the Casamance issue is further supported and encouraged by significant efforts on the part of non-governmental bodies and private individuals.

132. Thus, besides the activities of the National Peace Commission, there was a women's demonstration for peace in Casamance, sponsored and chaired by the First Lady of Senegal, at the time of the inauguration in Ziguinchor of the regional office of the National Human Rights Organization (ONDH), as well as a mega-concert for peace in Ziguinchor, involving most of Senegal's artists, and a festival of origins, also held in the same city.

133. Within the framework of the search for a solution to the Casamance conflict, a good offices mission of the African Commission on Human and Peoples' Rights visited Senegal from 2 to 7 June 1996 and, in the same perspective, the International Day of the African Child was marked in Ziguinchor on 16 June 1996.

VI. CONDITIONS OF ARREST (art. 9)

134. An arrest is a measure that affects a fundamental human right, namely freedom of movement, and for that reason it is strictly regulated by the law, as indicated in section V above.

135. The Code of Criminal Procedure provides for exceptional cases of detention in police custody (garde à vue) for four days renewable on the express authorization of the Public Prosecutor's Office. These special cases relate to offences of exceptional gravity involving State security. Consequently they are applicable on an exceptional basis and in such cases the Public Prosecutor's Office exercises stricter control over the measures taken.

136. It should be pointed out that with the disappearance, some time ago, of the State security body competent to deal with offences against the security

of the State, change is possible in this respect. Discussion has already begun within governmental bodies on the question of whether or not there is any need to maintain these special cases of detention.

137. In addition, consideration is being given to the advisability of allowing the presence of counsel in places where such detention takes place. The discussion on this matter is far from closed.

VII. HUMANIZATION OF CONDITIONS OF DETENTION (art. 10)

138. In view of the provisions of article 10 of the International Covenant on Civil and Political Rights and notwithstanding the difficulties caused by overcrowding in prisons, the Prison Administration has for several decades been pursuing a bold policy for the overall humanization of conditions of detention.

139. It has thus implemented measures within penal institutions involving awareness-raising, assistance, guidance and training for the benefit of the various categories of prisoners.

A. Separation of categories of prisoners and rehabilitation

140. With regard to the separation of categories of prisoners and the rehabilitation of facilities, the following developments may be noted:

Opening of a new prison for women in temporary detention at the Liberté VI penal institution with the assistance of Environmental and Development Action in the Third World (ENDA);

Specialization of the Hann prison and correctional centre to accommodate juvenile delinquents (minors);

Specialization of the Rufisque prison and correctional centre to accommodate female detainees;

Conversion of facilities at the Cap Manuel prison and correctional centre, providing 100 places to absorb the overflow from the Dakar central prison;

Construction of a section reserved strictly for minors at the Thiès prison and correctional centre, with the assistance of the Association pour le sourire d'un enfant;

Completion and equipment of a section reserved for female detainees at the Kaolack prison and correctional centre;

Project to reopen the Kédougou special penitentiary to play the true role of a penal institution accommodating prisoners serving long sentences, who represent only a fifth of the inmates handled by the Liberté VI penal institution, which is to be used only as a local prison and correctional centre.

These developments or improvements were carried out with the assistance of benevolent associations.

B. Social reintegration

141. With regard to social reintegration, the following developments may be noted:

Closure of the basement of the Hann prison and correctional centre, which was ill-adapted to incarceration and the respect of human dignity;

Initiative to create institutional settings for cooperation in agriculture and penal labour, in connection with the State's policy of disengagement;

Literacy education for detainees at the Kaolack prison and correctional centre, in coordination with the Association sénégalaise de sauvegarde des enfants en prison (ASSE);

Painting, weaving, leatherworking, carpentry and jewellery workshops in several penal institutions;

Organization in 1994 and 1995, with funding from ENDA, of exhibitions of works of art produced by inmates on the theme "Art in prison: discoveries", held at the African Museum of Art and the National Gallery;

Boxing instruction for minors at the Hann prison and correctional centre by the Senegalese Boxing Federation, and gala to evaluate progress;

Sponsorship of trained young boxers by clubs affiliated to the Senegalese Boxing Federation and host organizations such as Avenir de l'enfant (ADE) when they leave prison;

Drug abuse and AIDS awareness campaign organized by the prison medical and social service and the "Senegal pioneers" at the Hann prison and correctional centre, at the Dakar central prison and at the Liberté VI penal institution;

Establishment of agricultural units at Nioro, Gossas and Koutal and more developed agro-industrial units at Sébikhotane and Vélingara;

Building of a chalk factory at the Hann prison and correctional centre, whose products have been ordered by a local company;

Learning centre: the prison receives students from the National School for Social Workers and Educators (ENAES), the National Administration and Magistracy School (ENAM) and the Magistrates' Training Centre, as well as pupils from State schools such as Cathedral College, etc;

Extension project for Arabic teaching in collaboration with the International Islamic Foundation for Mutual Aid, Friendship and Peace, which offered a donation (10 beeves and 50 mattresses) to the prison administration on the occasion of Tabaski day;

Visit by the First Lady, President of the Partage Foundation, which offered a large donation of beds, sheets, blankets, food, subsidies, etc. to the Bambey prison and correctional centre;

Recognition of International Prison Watch by the Government and inspection of several penal institutions by its regional representative;

Concerts and cultural events organized at the Liberté VI penal institution, the Dakar prison, the Hann prison and correctional centre and the Thiès prison and correctional centre by Senegalese artists such as Youssou Ndour, UNICEF Ambassador, Oumar Pene, Demba Dia, etc.;

Opening of classrooms for juveniles at the Hann prison and correctional centre.

C. Training of prison staff

142. Together with these measures aimed at improving conditions of detention, particular emphasis is being given to a proposal to restructure teaching units at the National Police School by including new scientific subjects relating to sociology, psychology, forensic psychiatry, etc.

143. A project is now under way to amend the regulatory texts on the chapters relating to ongoing training of junior staff through the application of permanent basic instruction.

144. Thanks to the National Army, the Department of National Security and certain administrative bodies (the Directorate for File Automation, the National Archives, the Aristide Le Dantec hospital and the Volleyball Federation), some prison staff attended specialized training courses and received diplomas on the completion of their training.

145. French cooperation has contributed to the training in France of the few prison officials to whom it has provided study grants.

146. Reference should be made to the training seminars organized in 1994 and 1995 for prison officials by the Senegalese Red Cross and ENDA, as well as the seminar to be held when funds are available by the United Nations Office at Vienna (Crime Prevention and Criminal Justice Division).

147. Lastly, studies are under way for the introduction of visiting magistrates in Senegal.

VIII. PARTICIPATION OF CITIZENS IN POLITICAL LIFE (art. 25)

148. Senegal is a country with a long-established democratic culture. This is demonstrated by the exercise of universal suffrage in free and transparent elections.

149. Thus, as will be noted, the nation has provided itself with an electoral code enjoying the broadest consensus since it was elaborated by the political parties themselves. This code has entrusted the counting of votes to commissions composed of representatives of the political parties and chaired

by magistrates. It has placed polling under the supervision of the judicial power and has entrusted the settlement of disputes concerning presidential and legislative elections to the Constitutional Council.

150. Democratic culture also means the freedom enjoyed by political parties as regards their constitution and operation. Indeed, since 1981, Senegal has returned to a full multi-party system and there are at least about 20 political formations operating in the country with complete freedom.

151. A final illustration of this democratic culture is the process of regionalization that has been underway for some years and will enter its active phase with the adoption of the relevant legislative and regulatory instruments, known as the Local Authorities Code.

152. Between 1960 and 1996, Senegal evolved significantly within the framework of decentralization, as a result of which the country today comprises 368 local administrative areas, including 48 communes and 320 rural administrative areas. This ongoing process of decentralization will have the advantage of not splitting up the national territory into an excessive number of human communities very often deprived of the necessary means for their development. It aims to provide the best response to the requirements of economic and social development by making the regions the appropriate framework for planning the development of the local administrative areas, with loser links being established between decision-making centres. It will substitute post-control of legality for the current centralized system of prior approval, which tends to cause blockage in the functioning of the bodies subject to it.

153. Lastly, this reform will have the advantage of judiciously distributing the powers hitherto exercised by the State among the regions, communes and rural authorities with a view to achieving greater harmony in the social development of Senegal.

154. This new approach characterized by decentralization will undoubtedly bring Senegal closer to the trilogy of human rights, peace and development.